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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6930 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

TM SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR DP VORA for Petitioner

MR MUKEHS PATEL, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/03/2001

ORAL JUDGEMENT

1. By means of filing present petition under Article:226 of the Constitution of India, the petitioner Shri T.M.Solanki- Sub Regional Employment Officer (Technical & Unskilled Candidates), Employment Exchange Office, Nadiad has prayed following reliefs in para 13 of

the petition :-

- (a) that the petitioner's probationary period
be treated to have been completed w.e.f.
25.5.74 and not from 24.7.75 in view of
the reasons given in para 9.2(a) to para
9.2(f) above.
- (b) that the petitioner should be given
deemed date of promotion of Shri N.A.
Parmar i.e. 10.1.1985 in the cadre of
Sub Regional Employment Officer in view
of the reasons given in para 9.3(a) to
9.3(f) above.
- (c) that the petitioner be given promotion in
the cadre of Assistant Director of
Employment in the same way as is given to
Shri R.N. Kotak as per reasons given in
para 9.4(a) to para 9.4(f) above.
- (d) to (f) xxx xxx xxx

The petitioner has also prayed some consequential
reliefs and interim reliefs as enumerated in prayers (d)
to (f) of para 13 of the petition.

2. I have carefully considered the say of the
petitioner and the grievances expressed by him. Plain
reading of the petition itself has satisfied this Court
that this is a fit case wherein constitutional
jurisdiction vested with the Court under Article 226 of
the Constitution of India should be invoked because it is
also the grievance of the petitioner, to some extent,
that this is also a case of discrimination in dealing
with the officers within the department.

3. Undisputedly, the petitioner, and one Mr.
R.N.Kotak who has been referred in the petition, along
with others, had appeared in an interview before Gujarat
Public Service Commission ("GPSC" for short) held for the
post of District Employment Officer ("DEO" for short) and
a batch of four officers was selected by the GPSC. All
the four including the petitioner were initially posted
in the cadre of Probationer DEO, but unfortunately, after
completion of period of probation, the petitioner was not
intimated by the department as to his confirmation to the
post. It is not necessary to narrate the steps/stages
where the petitioner had felt that he is handled
injudiciously by the department, since they are clearly
mentioned in the petition. It is pertinent to note that

facts stated by the petitioner are not substantially controverted or replied by the respondents. Affidavit-in-reply filed by respondent no.3 is dated 22.9.2000. So, after about 10 years, the department has tried to put up a defence which has no legs to stand. The reply is not only incomplete, but is vague. The petitioner has chronologically submitted the state of facts to this Court vide his rejoinder affidavit dated 20.10.2000.

4. It is apparent on the record that on 4.7.1978, the petitioner came to know about departmental inquiry instituted against him. Name of the petitioner was not shown in the list of Employment Officer selected along with the petitioner and probation period was not also treated to have completed with effect from 6.5.1984. On representation made by the petitioner and on its careful consideration, respondents corrected the error vide Govt. Resolution dated 9.9.1983 (Annex.E to the petition) and treated the probation period to have been completed with effect from 1.2.1979. Again, respondents, on representation of the petitioner, treated the probation period to have been completed with effect from 24.7.1975. There is no justification placed before this Court by the respondents as to why probation period has not been treated to have been completed with effect from 1974 as it was done in the case of candidates selected in the very batch by the GPSC.

5. I am satisfied that the facts stated in the affidavit-in-reply by the respondents neither deal with the entire set of facts nor the same say or explain about rectifications made by the department itself in response to the representation made by the petitioner, e.g. affidavit-in-reply para-7 running page 2 states that the government had considered the say of the petitioner and the probation period of the petitioner was treated completed on 1.2.1979 instead of 1.4.1982. Rectification of mistake from the date 1.4.82 to 1.2.79 was second rectification. Affidavit is totally silent about the earlier or subsequent rectifications made by the department by which respondent department had treated the probationary period as completed from 24.7.1975. Affidavit is totally silent as to why the need of such rectification had arisen. It seems that each representation made by the petitioner was not considered properly and with open mind. Facts revealed in the affidavit-in-rejoinder clearly shows that one Mr. N.A. Parmar, undisputedly junior to the petitioner, was promoted to the higher post as some alleged departmental proceedings were pending against the petitioner. Mr.

Parmar was promoted to the post of Sub Regional Employment Officer on 10.1.1985. Department had followed sealed cover procedure. It is not the say of the respondent that the petitioner was declared unsuccessful or not worthy for promotion. On the day on which the alleged departmental inquiry had come to an end and the petitioner was exonerated, it was obligatory on the part of the respondents to open the sealed cover kept and the petitioner ought to have been promoted immediately without making any formal representation in this regard. Contents of the letter Annexure : "N" dated 19.2.1990 are surprising and contrary to the service jurisprudence. I am told by ld. counsel Mr.D.P.Vora for the petitioner that Mr. N.A. Parmar was promoted to the post of Sub Regional Employment Officer only because he was qualified and eligible being a "reserved candidate" for that post. The said post was to be filled in by a reserved candidate at a particular Roster Point. Hence, though Mr. Parmar was at Sr.No.32, he got an opportunity to jump over other candidates in view of Roster Policy. It is not a matter of dispute that the petitioner was qualified and eligible to get the same post, being entitle for appointment at that particular roster point. It is on record that the petitioner was at serial no.11 in the seniority list and was not disqualified or otherwise not entitle for the promotional post on the said date i.e. 10.1.1985. The respondents could have promoted the petitioner vice Mr. Parmar giving effect of promotion from 10.1.1985. Regularisation of Mr. Parmar in the said cadre was totally irrelevant and foreign to the concept of service jurisprudence.

6. Mr. D.P.Vora, ld. counsel for the petitioner has submitted that Mr. Parmar who was posted as Sub Regional Employment Officer has retired from service and the petitioner has also retired from service, but as his right to promotion was seriously jeopardised by the department in view of the facts stated by him in the petition, he should be given benefit as if he was promoted to the next higher post on each occasion i.e. (i) promotion to the post of Sub Regional Employment Officer with effect from 10.1.1985, and (ii) promotion to the post of Asstt. Director of Employment from 16.8.1991. It is accepted policy of the government that in absence of post, on completion of certain years of service, higher pay-scales are granted to the govt. employees. No formal posting of the petitioner is need to be made as he has retired on superannuation. Therefore, this is a fit case wherein the State can be directed that the petitioner should be granted all benefits and subsequent consequential benefits as if he

is given deemed date of 10.1.1985 in the promotional cadre of Sub Regional Employment Officer, being the date on which Mr. N.A. Parmar was given promotion on the aforesaid post. It is rightly submitted that the petitioner, thereafter, be given effect of promotion on the post of Asstt. Director of Employment in the same way as it was given to Shri R.N. Kotak, for the reasons enumerated in the petition.

7. For the reasons aforesaid, this petition is allowed in terms of prayer 13(a) to (c). Rule is made absolute accordingly.

8. Before parting with the judgment, I am inclined to observe that all the consequential benefits required to be granted to the petitioner in view of grant of this petition as aforesaid, the same shall be extended to the petitioner at the earliest and monetary benefits flowing therefrom should be calculated and paid to the petitioner at the earliest and preferably within six months from the date of receipt of writ of this order. Refixation of pension, if required to be made pursuant to this order, the said exercise should also be done at the earliest. This Court could have awarded costs to the petitioner, but Mr. Vora has fairly submitted that he would not press for costs at this stage keeping his right open to raise this plea in the event department prefers an appeal to the higher forum.

2.3.2001 [C.K. BUCH, J]

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